

Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 AF-10 ARA-10 EA-10 EUR-12
NEA-11 ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-01
SOE-02 DOE-15 FMC-01 TRSE-00 H-01 INR-10 INT-05
JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07 OMB-01
PA-01 PM-05 SP-02 SS-15 ICA-11 OIC-02 /191 W
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FM USMISSION GENEVA

TO SECSTATE WASHDC 9214

C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06795

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS CONFERENCE - MAY 2 HIGHLIGHTS

BEGIN SUMMARY: REACTION TO NJENGA'S REVISED ARTICLE 153
WAS GENERALLY POSITIVE IN NG-1. KOH (NG-3) IS NOW USING
A SMALLER NEGOTIATING GROUP WHICH MAY LEAD TO PROGRESS.
NG-6 WAS UNABLE TO AGREE ON THE IRISH FORMULA BUT CONTINUED
THE DIALOGUE. CHAIRMAN MANNER'S "COMPROMISE" TEXT ON
DELIMITATION WAS STRONGLY CRITICIZED IN NG-7. COMMITTEE
III REVIEWED POLLUTION PROPOSALS AND DISCUSSED INPUTS
TO THE CHAIRMAN'S PLENARY REPORT. END SUMMARY.

1. CHAIRMAN NJENGA HANDED OUT HIS REVISED ARTICLE 153
(ON THE REVIEW CONFERENCE) IN NG-1. (FULL TEXT SENT
SEPTEL.) REACTION TO THE NEW 153 WAS GENERALLY POSITIVE
AMONG THOSE WHO SPOKE ALTHOUGH SOME G-77 DELEGATIONS
SAID IT COULD ONLY BE FULLY EVALUATED IN A PACKAGE WITH
PROPOSALS ON SIMILAR CORE ISSUES, INCLUDING THOSE OF THE
OTHER FIRST COMMITTEE GROUPS, AND DEVELOPED COUNTRIES
SAID IT WOULD BE VERY DIFFICULT TO ACCEPT.

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2. A LIGHTLY ATTENDED AND NON-PRODUCTIVE NG-3 MEETING
(ORGANS OF THE AUTHORITY) TOOK UP THE THIRD AND FINAL
ISSUE ON AGENDA, I.E., RELATIONSHIP BETWEEN THE ASSEMBLY
AND COUNCIL. DISCUSSION FOCUSED ON ARTICLES 158 AND
160 AND IT WAS CLEAR THAT MOST DELEGATES DID NOT REGARD
THIS AS CORE ISSUE.

3. AMBASSADOR KOH IN NG-2 HAS ALTERED THE FORMAT OF HIS MEETINGS IN A WAY WHICH WILL FACILITATE THE WORK ON FINANCIAL ARRANGEMENTS. INSTEAD OF THE FULL GROUP, HE CONVENED AN OPEN-ENDED WORKING GROUP OF TECHNICAL EXPERTS WHICH MET MOST OF MAY 2. THERE WAS SUCH A USEFUL EXCHANGE THAT A FULL DAY OF DISCUSSIONS IS SCHEDULED FOR MAY 3. IT IS TOO EARLY TO TELL DEFINITELY WHETHER OR NOT PROGRESS ACTUALLY WILL BE MADE, BUT CONSENSUS SEEMS TO BE EMERGING ON THE FOLLOWING FOUR POINTS:

(1) THAT THE \$60 MILLION FRONT-END FEE PROPOSED BY INDIA MUST BE ELIMINATED;

(2) THAT A NOMINAL ROYALTY PLUS PROFIT SHARING IS THE MODE BY WHICH THE AUTHORITY SHOULD RECEIVE REVENUES FROM CONTRACTORS;

(3) THAT INCOME TO THE AUTHORITY SHOULD DERIVE ONLY FROM MINING ACTIVITY, ALTHOUGH A PERCENTAGE OF THE FINISHED METAL PRICE CAN BE USED TO DETERMINE THE AMOUNT OF THAT INCOME; AND

(4) THAT THE ANNUAL FIXED CHARGE TO MINE IS NOT NECESSARY.

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KOH INSISTED THE TIME HAS COME FOR SPECIFIC PROPOSALS WITH NUMBERS IN THEM. THE U.S. AND USSR AGREED TO SUBMIT SUCH PROPOSALS ON MAY 3 AND THE EEC MAY ALSO DO SO. (U.S. PROPOSAL TO BE SENT SEPTTEL.)

4. AT A LIGHTLY-ATTENDED NG-6 MEETING--THE LAST NOW SCHEDULED--IRELAND, AUSTRALIA, THE U.K., INDIA AND URUGUAY RECITED THE MERITS OF THE IRISH FORMULA. DENMARK AND THE NETHERLANDS SAID THEY COULD ACCEPT THE IRISH FORMULA PROVIDED CERTAIN CONDITIONS WERE MET. GHANA PROPOSED THE "FOOT OF THE SLOPE" CRITERION AS A COMPROMISE, AND INSISTED THAT THE LEVEL OF REVENUE SHARING BE ON A 5-10 (NOT 1-5) PERCENT RATE. JAPAN SUPPORTED THE HEDBERG FORMULA (FOOT OF SLOPE PLUS 60 MILES). THE USSR ARGUED AGAINST THE IRISH FORMULA AND FOR ITS SUGGESTED FORMULATION. FINALLY, THERE WAS AN EXCHANGE AMONG THE UKRAINE, USSR, IRELAND AND URUGUAY ON THE PROPOSED CONTINENTAL SHELF BOUNDARY COMMISSION, WITH THE LATTER TWO ARGUING THAT, IF THE IRISH PROPOSAL WERE ACCEPTED, DETAILS OF THE BOUNDARY COMMISSION COULD EASILY BE WORKED OUT. THE SOVIET UNION AND UKRAINE QUESTIONED THE BOUNDARY COMMISSION.

5. AUSTRIA HAS ORGANIZED A REPRESENTATIVE GROUP OF ABOUT 15 STATES TO CONSIDER THE DEFINITION OF THE SHELF AND REVENUE SHARING AND AT ITS FIRST MEETING ONLY THE USSR OPPOSED THE IRISH FORMULA.

6. THE NG-5 MEETING STARTED WITH: A SPIRITED BLAST BY MEXICO AND NORWAY AGAINST A COMPROMISE DRAFT PREPARED BY CHAIRMAN STAVROPOULOS, A SOVIET DECLARATION THAT THE USSR CANNOT ACCEPT ANY DRAFT WHICH DOES NOT PROVIDE CDS FOR DISPUTES RELATING TO THE ALLOCATION OF SURPLUS, AND A JAPANESE PROPOSAL FOR A PRELIMINARY ADJUDICATION OF THE QUESTION OF ABUSE OF DISCRETION PRIOR TO SUB-

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FM USMISSION GENEVA
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C O N F I D E N T I A L SECTION 02 OF 03 GENEVA 06795

MISSION OF AN ISSUE TO CONCILIATION. THE GROUP SETTLED DOWN TO A STEP-BY-STEP EXAMINATION OF SITUATIONS WHICH SHOULD BE SUBJECT TO COMPULSORY CONCILIATION. IT AGREED, PROVISIONALLY ON THREE PARAGRAPHS DEFINING DISPUTES TO BE SUBJECT TO SUCH CONCILIATION:

"(I) ANY DISPUTE ARISING OUT OF AN ALLEGATION THAT A STATE HAS MANIFESTLY AND GROSSLY FAILED TO COMPLY WITH ITS OBLIGATIONS UNDER THE PRESENT CONVENTION CONCERNING THE CONSERVATION OF THE LIVING RESOURCES.

"(II) ANY DISPUTE ARISING OUT OF AN ALLEGATION THAT A COASTAL STATE HAS MANIFESTLY AND GROSSLY FAILED TO DECLARE WHETHER A SURPLUS EXISTS OR NOT.

"(III) ANY DISPUTE ARISING OUT OF AN ALLEGATION THAT A COASTAL STATE HAS FAILED TO ALLOCATE TO ANY STATE THE WHOLE OR PART OF THE SURPLUS DECLARED TO EXIST BY THE COASTAL STATE."

THE COASTAL STATES REJECTED AN ATTEMPT TO EXTEND THIS PROCEDURE TO ANY FAILURE OF A COASTAL STATE TO COMPLY
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WITH ITS OBLIGATIONS UNDER PARAGRAPH 3 OF ARTICLE 62.

7. CHAIRMAN MANNER'S (SENT SEPTTEL) COMPROMISE TEXT ON DELIMITATION OF MARITIME ZONES BETWEEN ADJACENT AND OPPOSITE STATES MET WITH CRITICISM FROM BOTH SIDES IN NEGOTIATING GROUP 7. STATES FAVORING DELIMITATION VIA EQUIDISTANCE TENDED TO SUPPORT HIS SUBSTANTIVE RULE BECAUSE IT WOULD GIVE MORE PROMINENCE TO THE MEDIAN LINE THAN DOES THE ICNT (ARTICLES 74(1) AND 83(1)). THEY FELT, HOWEVER, THAT THE CHAIRMAN SHOULD HAVE CALLED IT A PRINCIPLE FOR, RATHER THAN MERELY A METHOD OF, DELIMITATION. THESE STATES GENERALLY REJECTED THE CHAIRMAN'S SUGGESTION THAT BOTH REFERENCE TO THIRD-PARTY SETTLEMENT AND ESTABLISHMENT OF A PROVISIONAL REGIME BE CONTINGENT UPON MUTUAL CONSENT OF THE PARTIES. STATES SUPPORTING DELIMITATION ACCORDING TO EQUITABLE PRINCIPLES TENDED TO OPPOSE THE CHAIRMAN'S SUBSTANTIVE LANGUAGE ON THE GROUND THAT IT REDUCES EQUITY FROM A RULE OF DECISION TO A DESIRABLE SOLUTION. ON THE OTHER HAND, THESE STATES MOSTLY FAVORED THE REQUIREMENT OF AD HOC AGREEMENT FOR DISPUTE SETTLEMENT AND INTERIM SOLUTIONS. IN SHORT, THE CHAIRMAN'S TEXT WOULD NOT LEAD TO A COMPROMISE, NOR WERE THE PARTIES PREPARED TO MOVE TOWARD SOME OTHER BASIS OF AGREEMENT.

8. THE ONLY REAL HOPEFUL SIGN OF THE DAY WAS A SUGGESTION BY VENEZUELA THAT THE CHAIRMAN'S TEXT FOR 74(1) AND 83(1) BE MODIFIED TO REFER TO EQUITY AS A PRINCIPLE AND TO SHIFT TO THE STATE CLAIMING EQUIDISTANCE THE BURDEN OF SHOWING THAT THIS WOULD BE THE APPROPRIATE SOLUTION. (THE CHAIRMAN'S TEXT PUTS ON THE STATE ARGUING FOR EQUITABLE PRINCIPLES THE BURDEN OF SHOWING THAT EQUIDISTANCE IS UNJUSTIFIED.) WHILE THE VENEZUELAN
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PROPOSAL RECEIVED SUPPORT ONLY FROM OTHER EQUITY STATES, IT DID REPRESENT A NEW ATTEMPT BY THIS GROUP TO AMALGA-

MATE EQUITY AND EQUIDISTANCE IN A SINGLE FORMULA.

9. APPARENTLY HEEDLESS OF THE CRITICISMS AND DIVISIONS IN THE ROOM, THE CHAIRMAN ANNOUNCED HIS INTENTION TO REPORT TO PLENARY THAT THE WORK OF THE GROUP WAS APPROACHING A STAGE WHERE COMPROMISE WAS POSSIBLE AND THAT FURTHER AND FINAL CONSULTATIONS MIGHT GO FORWARD ON THE BASIS OF HIS DRAFT. HE SAID HIS ARTICLES 74(1) AND 83(1) TEXT, MIGHT BE CONSIDERED A GOOD BASIS FOR COMPROMISE AND HE PROPOSED AN ADJUSTED REDRAFT (ALTHOUGH HE WOULD NOT PRESENT IT TO THE MAY 3 PLENARY). HE ALSO RECOGNIZED THAT NO NEGOTIATING TEXT ON DISPUTE SETTLEMENT WAS POSSIBLE CONSIDERING PRESENT DIVISIONS. SEVERAL DELEGATIONS, INCLUDING LIBYA, TURKEY, IRELAND, AND VENEZUELA, OBJECTED TO ANY SUGGESTION BY THE CHAIRMAN THAT HIS TEXT OF 74(1) AND 83(1) COULD PROVIDE THE BASIC ELEMENTS OF A COMPROMISE. THE U.S. (TAFT) RECORDED ITS UNDERSTANDING THAT NEGOTIATIONS WOULD CONTINUE, IF AT ALL, ON THE BASIS OF VARIOUS TEXTS, INCLUDING THE ICNT.

10. INFORMAL COMMITTEE III NEGOTIATIONS CHAIRED BY VALLARTA DISCUSSED PROPOSALS FOR: ARTICLE 234 (BY SPAIN), ARTICLES 209 AND 211 (BY BRAZIL), AN AMENDMENT TO ARTICLE 1 (BY PORTUGAL), AND THE U.S. PROPOSAL FOR ARTICLE 1-- TO DECLARE THAT THE MARINE ENVIRONMENT INCLUDES MARINE LIFE. WITH THE EXCEPTION OF THE U.S. PROPOSAL, ALL RECEIVED MIXED REACTIONS SO NONE COULD BE IDENTIFIED AS CONTRIBUTING TO A SUBSTANTIALLY IMPROVED PROSPECT FOR CONSENSUS. THE U.S. PROPOSAL WAS NOT ATTACKED ON ITS MERIT, BUT WAS PERCEIVED AS OPENING UP THE LARGER QUESTION OF THE DEFINITION OF THE MARINE ENVIRONMENT WHICH WAS SAID TO BE INCAPABLE OF DEFINITION. AS A RESULT, IT WAS AGREED THAT YANKOV'S REPORT TO THE PLENARY WOULD

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C O N F I D E N T I A L SECTION 03 OF 03 GENEVA 06795

SAY THAT THE MARINE ENVIRONMENT INCLUDES MARINE LIFE.
THIS STATEMENT, WHILE NOT AS SATISFACTORY AS MODIFICATION
OF ARTICLE 1, WILL BE A USEFUL PART OF THE LEGISLATIVE
HISTORY TO SUPPORT THE U.S. INTERPRETATION OF THE ICNT.

11. THE AFTERNOON COMMITTEE III MEETING UNDER YANKOV
MET TO REPORT TO HIM ON THE RESULTS OF THE INFORMAL
NEGOTIATIONS AND TO PREPARE THE CHAIRMAN'S PLENARY
REPORT. THE POLLUTION REPORT WAS OBJECTIVE AND BASICALLY
NON-CONTROVERSIAL; HOWEVER, THE SCIENCE REPORT CONTAINED
SEVERAL INACCURACIES AND THE U.S. INTERVENED SEVERAL
TIMES TO INSIST UPON CLARIFICATIONS. THE COMMITTEE
ALSO REQUESTED THE CHAIRMAN TO SEEK MORE TIME TO CONTINUE
NEGOTIATIONS ON OUTSTANDING MATTERS. AN
EXTENSION OF THE NEGOTIATING GROUPS WILL GIVE US MORE
TIME TO DEVELOP FURTHER SUPPORT FOR THE U.S. AMEND-
MENTS. INFORMAL NEGOTIATIONS ON U.S. PROPOSALS FOR
ARTICLES 221(6) AND 229 CONTINUED WITHOUT REACHING
AGREEMENT. RICHARDSON

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